

**SENATE JOURNAL
58TH LEGISLATURE
TWENTIETH LEGISLATIVE DAY**

Helena, Montana
January 30, 2003

Senate Chambers
State Capitol

Senate convened at 1:04 p.m. President Keenan presiding. Invocation by Pastor Keith Johnson. Pledge of Allegiance to the Flag.

Roll Call. All members present except Senator Stapleton, excused. Quorum present.

The presiding officer has authenticated the daily journal for the nineteenth legislative day.

Senator Ellingson excused at this time.

REPORTS OF STANDING COMMITTEES

BILL REPORT

Correctly printed: **SB 288, SB 289, SB 290, SB 291, SJR 10, SJR 11.**

Correctly engrossed: **SB 142, SB 151.**

BUSINESS AND LABOR (Mahlum, Chairman):
SB 229, introduced bill, be amended as follows:

1/29/2003

1. Title, page 1, line 7.

Strike: "AGENT OR BROKER"

Insert: "INSURANCE PRODUCER"

2. Page 1, line 24.

Strike: "agent or broker"

Insert: "insurance producer"

3. Page 2, line 11.

Strike: "agent or broker"

Insert: "insurance producer"

4. Page 3, line 15.

Strike: "agent or broker"

Insert: "insurance producer"

5. Page 4, line 13.

Strike: "agent or broker"

Insert: "insurance producer"

And, as amended, do pass. Report adopted.

EDUCATION AND CULTURAL RESOURCES (Glaser, Chairman):

1/29/2003

HB 78, be concurred in. Report adopted.

HB 153, be concurred in. Report adopted.

FINANCE AND CLAIMS (Zook, Chairman):

1/30/2003

SB 28, introduced bill, be amended as follows:

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1. Title, page 1, line 6 through line 8.

Following: "LOANS;" on line 6

Strike: remainder of line 6 through "CAPACITY;" on line 8

2. Title, page 1, line 17.

Following: "SECTIONS"

Strike: "31-1-702,"

3. Page 1, line 22 through page 2, line 1.

Strike: section 1 in its entirety

Renumber: subsequent sections

And, as amended, do pass. Report adopted.

HB 1, be concurred in. Report adopted.

HB 16, be concurred in. Report adopted.

HB 46, be concurred in. Report adopted.

HB 162, be concurred in. Report adopted.

STATE ADMINISTRATION (Cobb, Chairman):

1/29/2003

SB 79, do pass. Report adopted.

HB 25, be concurred in. Report adopted.

HB 34, be concurred in. Report adopted.

HB 38, be concurred in. Report adopted.

HB 39, be concurred in. Report adopted.

HB 69, be concurred in. Report adopted.

SB 215 - Senator Toole rose on a point of parliamentary inquiry as to the Adverse Committee Report on **SB 215** on the nineteenth legislative day and questioned the status of the bill. Senator Thomas explained that if the committee report is adopted, the bill would go on to second reading with a do not pass motion. Senator Toole stated he would like to have a meeting of the Rules committee to address the issue. Senator Thomas stated the Rules Committee could meet to discuss the issue.

MESSAGES FROM THE OTHER HOUSE

House bills passed and transmitted to the Senate for concurrence:

1/29/2003

HB 156, introduced by Matthews

HB 217, introduced by Brueggeman

HB 238, introduced by Andersen

HB 248, introduced by Balyeat

HB 261, introduced by Haines

HB 315, introduced by Lawson

HB 323, introduced by Jent

MOTIONS

HB 1 - Senator Zook moved the rules be suspended for the purpose of placing **HB 1** on second and third reading this legislative day. Motion carried.

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HB 1 - Senator Zook moved that **HB 1** be placed on second and third reading this legislative day. Motion carried.

SB 241 - Senator Shea moved that Perry be added as sponsor to **SB 241**. Motion carried.

FIRST READING AND COMMITMENT OF BILLS

The following Senate bills were introduced, read first time, and referred to committees:

SB 292, introduced by Cocchiarella, Brueggeman, Kitzenberg, Mahlum, Mood, D. Ryan, Wanzenried, referred to Business and Labor.

SB 293, introduced by Wheat, referred to Local Government.

SB 294, introduced by Gebhardt, Elliott, Parker, Tropila, Witt, referred to Taxation.

SB 295, introduced by Butcher, Jackson, Black, Gebhardt, Witt, referred to Highways and Transportation.

SB 296, introduced by Taylor, Cooney, referred to State Administration.

SB 297, introduced by Glaser, Erickson, Fuchs, Lewis, Stonington, Story, referred to Taxation.

SB 298, introduced by F. Thomas, Mood, R. Brown, Cocchiarella, Keenan, Laszloffy, McGee, McNutt, Shea, Stapleton, referred to Judiciary.

SB 299, introduced by F. Thomas, referred to Education and Cultural Resources.

SB 300, introduced by Grimes, referred to Natural Resources.

**SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)**

Session 1

Senator Thomas moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator Keenan in the chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

HB 1 - Senator Zook moved **HB 1** be concurred in. Motion carried unanimously.

Senator Thomas moved the committee rise, report, and beg leave to sit again. Motion carried. Committee arose. Senate resumed. President Keenan in the chair. Chairman Keenan moved the Committee of the Whole report be adopted. Report adopted unanimously.

Senators Cocchiarella and Shea excused at this time.

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

HB 1 concurred in as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Sprague, Squires, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.

Total 47

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Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Cocchiarella, Shea, Stapleton.
Total 3

SB 34 passed as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cooney, Cromley, Curtiss, DePratu, Ellingson, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Sprague, Squires, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 46

Nays: Elliott.
Total 1

Absent or not voting: None.
Total 0

Excused: Cocchiarella, Shea, Stapleton.
Total 3

SB 86 passed as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Sprague, Squires, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 47

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Cocchiarella, Shea, Stapleton.
Total 3

SB 135 passed as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Sprague, Squires, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 47

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Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Cocchiarella, Shea, Stapleton.
Total 3

SB 137 passed as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Sprague, Squires, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 47

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Cocchiarella, Shea, Stapleton.
Total 3

SB 202 passed as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Sprague, Squires, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 47

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Cocchiarella, Shea, Stapleton.
Total 3

SB 213 passed as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Gebhardt, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Sprague, Squires, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 45

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Nays: Esp, Glaser.
Total 2

Absent or not voting: None.
Total 0

Excused: Cocchiarella, Shea, Stapleton.
Total 3

SB 242 passed as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cooney, Cromley, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, Pease, Perry, Roush, Ryan, Schmidt, Sprague, Squires, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 45

Nays: Curtiss, O'Neil.
Total 2

Absent or not voting: None.
Total 0

Excused: Cocchiarella, Shea, Stapleton.
Total 3

SJR 9 adopted as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Sprague, Squires, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Tropila, Wheat, Zook, Mr. President.
Total 47

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Cocchiarella, Shea, Stapleton.
Total 3

**SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)**

Session 2

Senator Thomas moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator Black in the chair.

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Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

SB 16 - Senator Mangan moved **SB 16** do pass. Motion carried with Senator Tropila voting nay.

Senator Tropila excused at this time.

SB 95 - Senator Stonington moved **SB 95** do pass. Motion carried unanimously.

SB 145 - Senator Bohlinger moved **SB 145** do pass. Motion carried as follows:

Yeas: Barkus, Black, Bohlinger, Cobb, Cooney, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McNutt, Nelson, Pease, Perry, Roush, Ryan, Schmidt, Sprague, Squires, Stonington, Tash, Tester, Thomas, Toole, Wheat, Zook, Mr. President.

Total 36

Nays: Anderson, Bales, Butcher, Cromley, Curtiss, Grimes, McGee, O'Neil, Story, Taylor.

Total 10

Absent or not voting: None.

Total 0

Excused: Cocchiarella, Shea, Stapleton, Tropila.

Total 4

SB 173 - Senator McNutt moved **SB 173** do pass. Motion carried unanimously.

SB 216 - Senator Tester moved consideration of **SB 216** be passed for the day. Motion carried..

SB 243 - Senator Wheat moved **SB 243** do pass. Motion carried as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Cobb, Cooney, Cromley, Curtiss, DePratu, Ellingson, Elliott, Esp, Gebhardt, Glaser, Grimes, Hansen, Harrington, Johnson, Kitzenberg, Laible, Mahlum, Mangan, McCarthy, McGee, McNutt, Nelson, O'Neil, Pease, Perry, Roush, Ryan, Schmidt, Sprague, Squires, Stonington, Story, Tash, Taylor, Tester, Thomas, Toole, Wheat, Zook, Mr. President.

Total 46

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Cocchiarella, Shea, Stapleton, Tropila.

Total 4

SB 257 - Senator Cooney moved **SB 257** do pass. Motion carried unanimously.

Senator Thomas moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Keenan in the chair. Chairman Black moved the Committee of the Whole report be adopted. Report adopted unanimously.

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REPORTS OF SELECT COMMITTEES

JOINT SELECT COMMITTEE DISTRICTING AND APPORTIONMENT: (Barkus, Ch.)
SR 2, introduced resolution, be amended as follows:

1/30/2003

1. Page 1, line 14.

Strike: "5%"

Insert: "approximate 10% total"

Strike: "allowance"

Insert: "range"

Following: "plan"

Strike: "was"

2. Page 1, line 15.

Strike: "used"

Insert: "is not in support of legitimate governmental interests, but is"

Following: "partisan"

Insert: "political"

Following: "gain"

Strike: ", that"

Insert: "; and

WHEREAS,"

Following: "1%"

Insert: "total"

Following: "deviation"

Insert: "range"

3. Page 2, line 10.

Strike: "mean-spirited,"

And, as amended, be adopted. Report adopted as follows:

Yeas: Anderson, Bales, Barkus, Black, Bohlinger, Butcher, Curtiss, DePratu, Esp, Gebhardt, Glaser, Grimes, Johnson, Kitzenberg, Laible, Mahlum, McGee, McNutt, O'Neil, Perry, Roush, Sprague, Story, Tash, Taylor, Thomas, Zook, Mr. President.

Total 28

Nays: Cobb, Cooney, Cromley, Ellingson, Elliott, Hansen, Harrington, Mangan, McCarthy, Nelson, Pease, Ryan, Schmidt, Squires, Stonington, Tester, Toole, Wheat.

Total 18

Absent or not voting: None.

Total 0

Excused: Cocchiarella, Shea, Stapleton, Tropila.

Total 4

SR 2 - Minority Report on SR 2 is as follows:

Minority Report on SR 2 and HR 3 Regarding The Recommendation to the Montana Districting and Apportionment Commission

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Submitted by Joint Legislative Committee on Districting and Apportionment members Senator Gerald Pease and Representative Joey Jayne

We, Senator Gerald Pease and Representative Joey Jayne, respectfully submit this report to the people of Montana, the 2003 Legislature, and the Montana Districting and Apportionment Commission in opposition to the findings and recommendation outlined in SR 2 and HR 3.

The report contains two parts. Part 1 covers the justifications for full legislative support of the plan presented by the Districting and Apportionment Commission. Part 2 corrects misinformation and refutes the findings outlined in SR 2 and HR 3.

The 2000 Districting Commission faced a monumental task due to the dramatic changes in Montana's population documented by the 2000 Census. Montana's population increased by 103,310 people, 12.9%, in the last decade. This compares to an increase of only 12,275 people, 1.6%, recorded in the 1990 Census.

An analysis completed by the Legislative Services Division confirmed that Montana's current 100 house districts were in need of major changes in order to comply with the requirements of the 14th Amendment of the United States Constitution and the Montana Constitution that guarantees the principle of "one person, one vote."

The 2000 Census reported American Indian citizens are the fastest growing demographic group in Montana. Currently 66,320 Montanans, 7.3%, identify themselves as American Indian or as American Indian and one or more races. This is an increase of 39% over the 1990 Census numbers.

The sheer magnitude of these documented changes in census numbers requires a redistricting plan that is significantly different from the current established legislative districts.

Part 1: Justifications for the Plan Presented by the Districting and Apportionment Commission

The 2000 Districting Commission upheld all Montana State and United States Constitutional and legal requirements for redistricting. Four (4) mandatory criteria and three (3) discretionary criteria were adopted unanimously by the Commission on November 16, 2000, to guide the commission in development of the new plan for Montana's 100 House and 50 Senate Districts.

The Commission held 14 statewide, regional public hearings and 6 hearings in Helena, Montana, on plan proposals. This was more than any previous commission. Three (3) hearings were held to specifically gather testimony from legislators on plan alternatives.

Commission members attended a legislative hearing at the request of the Senate and House State Administration Committees during the August 2002 Special Session. The Commission also had members at all legislative hearings concerning redistricting at the 2003 Session to provide legislators with information and gather recommendations.

More than 1600 Montanans commented on the redistricting proposals in the past 2 years. The plan before the legislature was developed and amended as a result of that public testimony. The plan submitted by the Commission was preferred by more Montanans of both political parties than any other plan.

Each district, adopted in the plan, was specifically described and accompanied by an explanation of how it met all constitutional and statutory criteria in comprehensive motions adopted by the Commission.

The plan is of historic significance because for the first time 6 house districts and 3 senate districts were adopted to provide American Indian citizens with the opportunity to elect candidates of their own choice to represent their

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communities at the Montana Legislature.

Part 2: Refutation of findings and recommendation outlined in SR 2 and HR 3.

Finding 1: WHEREAS, the Senate (and House) contends that the 5% population deviation allowance contained in the plan was used for political gain rather than for the original intent of the law, that the Constitution is clear in language that the districts "shall be as nearly equal in population as is practicable", and that a 1% population deviation is both practicable and possible (Page 1, Lines 14-17).

Refutation: The current plan follows a plus or minus criterion of 5%. The United States Supreme Court established the 5% deviation. A plan within that criterion is presumed to be constitutional and therefore in compliance with the 14th Amendment that requires the one person, one vote.

The Commission obtained a smaller overall population deviation range than both the 1990 and 1980 Commissions. The overall population deviation range, for adopted 2000 house districts, was 9.85%. This compares to an overall deviation range of 9.96% under the 1990 plan and 10.94% in the 1980 plan.

At the Commission's public hearings, "Plan 200" was the preferred plan of most Republicans who testified. Plan 200 has an overall deviation range of 9.86%. The Republican preferred alternative has almost an identical deviation range as the plan adopted by the Commission.

The 5% deviation criterion was adopted by all previous Montana redistricting commissions. The motion to use the 5% criterion for the 2000 Redistricting Commission was made by Republican Commissioner Jack Rehberg and adopted unanimously by the Commission.

Use of the 5% deviation criterion gives the Commission the needed flexibility to comply with the adopted mandatory criteria and address the discretionary criteria to establish districts with similar communities of interest.

The 5% deviation is widely accepted among the states. 41 of the 43 states, which have completed their redistricting plans, are within the 5% population deviation.

Using a 1% deviation would result in a violation of the Section 2 of the Voting Rights Act.

The use of the 1% criterion would change both the Indian majority house districts and the senate district on the Crow and Northern Cheyenne Reservations to Indian minority districts.

An analysis of the use of the 1% criterion demonstrates the American Indian voting age population of adopted House District 29 (Northern Cheyenne and Crow Reservations) would decrease from 57.3% down to 47.6%. The American Indian voting age population of the adjoining House District 30 (Crow Reservation) would decrease from 55.2% down to 45.5%. The senate district which encompasses both the two reservation house districts would have its American Indian voting age population reduced from 56.3% down to 46.6%.

The American Indian voters on the Crow and Northern Cheyenne Reservations would once again be reduced to minority voting status in their own homelands. American Indian residents of these two house districts and the senate district would no longer be given the opportunity to elect a candidate of their choice.

An independent analysis of political leanings of the 100 adopted house districts was conducted by the Great Falls Tribune in November of 2002. The Tribune analyst concluded the Commission's plan would likely result in 40 "safe" Republican districts, 30 "safe" Democratic districts, and 30 "swing" districts in which a candidate of either political party would have a realistic opportunity to be elected.

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It is nonsense to argue that a plan that gives the Republicans a 10 "safe" seat advantage over Democrats is unfair to Republican interests.

It is noted in testimony following the implementation of the 1990 Republican Commission's plan that the Republicans gained 14 seats in the House and 11 seats in the Senate in the next election. The 1990 plan established the groundwork for complete Republican control of both houses of the legislature since 1994.

Reducing the population deviation criterion to 1% would greatly reduce the Commission's flexibility to draw districts that keep established Montana communities of similar interest intact. It would force the Commission to draw more districts that split cities, towns, counties, and American Indian reservations.

Finding 2: WHEREAS, the Senate contends that the majority of the Commission failed to consider the criterion of compact districts in creating several House and Senate Districts that are over 200 miles from one end to the other;(Page 1, Lines 18-20)

Refutation: Montana is one of the largest and least densely populated states in the country. Because of our unique geography, districts of large geographic size are necessary. All previous commissions drew districts which were criticized for their large size. However, the courts have recognized that Montana's large geography sometimes demands creation of large districts to guarantee the principle of "one person, one vote."

The dramatic population losses in rural, eastern Montana counties documented by the 2000 Census requires some districts to substantially increase in size. In addition, meeting the mandatory criterion of complying with Section 2 of the Voting Rights Act requires districts to cover large geographic areas.

A great deal of attention has been made of the size of the adopted House District 1 which includes portions of the Flathead and Blackfeet Indian Reservations. This new district is no larger in size than 11 existing districts established by the 1990 Republican Commission.

Finding 3: WHEREAS, the Senate contends that the American Indians have been isolated and that other minority groups were ignored when several districts in Montana were established; (Page 1, Lines 21-22)

Refutation: No testimony or factual evidence was provided to the Commission or the Joint Legislative Committee that documented American Indian citizens were isolated. It is difficult to conclude that by increasing the legislature's composition by one Indian majority house seat and two senate seats that it isolates Indian voters.

The finding is false. Contrary to "isolating" American Indian voters, the Commission's plan provides more opportunity for reservation community residents to actively participate in Montana's political system.

The Commission's plan does not ignore other minority groups. Census figures document a substantial growth in minority residents throughout Billings. The plan recognizes these census changes and creates 5 districts in Billings, Montana, in which minority voters have the opportunity to have a significant impact in legislative elections.

An alternative plan for Billings, Montana, known as the "Birdwell Amendment" was proposed. An analysis of the Birdwell Amendment found that minority residents would only have significant impact in 3 districts as opposed to the 5 districts created by the Commission's plan.

Former Billings Republican Representative Bruce Simon testified that under the Commission's plan, if the Billings' Southside Neighborhoods held a public meeting, it would require 4 representatives to attend rather than one. It is hard to argue that having 4 representatives listening

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to neighborhood concerns rather than one, gives that part of Billings less representation. This finding is also obviously false.

Finding 4: WHEREAS, the Senate contends that American Indian populations were used as the predominant criterion in tentatively establishing six House Districts and three Senate Districts in strict violation of the mandatory criterion that race may not be the predominant factor to which the traditional discretionary criteria are subordinated; (Page 1, Lines 23-26)

Refutation: No testimony or factual evidence was provided to the Commission or the Joint Legislative Committee that substantiates this finding. The Commission received testimony from hundreds of residents of the adopted Indian majority districts providing overwhelming documentation that those communities share rich cultural traditions, language, family and social networks, educational issues, voting patterns, political alliances, and socio-economic characteristics. Residents also share common interests created by the unique status of their tribal governments and their relationships with other local, state, and federal governments.

The evidence clearly documents race is only one of many shared community characteristics and is not the predominant characteristic in the creation of these districts.

Most of the Indian majority districts have voting age populations of American Indians in the range of 55%. The 94 non-Indian majority districts have voting age populations of white voters in the range of 90%. No one would suggest race was used as the predominant factor in latter districts. As with the Indian majority districts, race is only one characteristic the non-Indian districts share.

Current Republican Districting Commissioner Dean Jellison was quoted in the November 23, 2002 edition of the Missoulian as saying, "they (Indian majority districts) look funny but I think they are legally defensible. From a legal viewpoint, I think it is a reasonable thing to do."

The notion that one can "support Montana Indian voting rights" and not support the creation of 6 house and 3 senate districts is not credible. Montana Indian voters for the first time have the opportunity to elect candidates of their choice in both the House and the Senate. Opponents of these districts have provided no alternative plans on how to achieve proportional representation for American Indian communities.

Finding 5: WHEREAS, the Commission failed to adopt a criterion of consideration of existing district lines as the previous Commission had adopted;(Page 1, Lines 27-28)

Refutation: The 2000 Census documented major growth and shifts in Montana's population. The Legislative Services Division's analysis documented that the current legislative districts had a population deviation range from the ideal district size of 9022 people by 86%. Currently 80 house districts are outside the 5% ideal population deviation range.

It was the constitutionally mandated task of the Commission to create new districts that had a plus or minus 5% population deviation range. It is mathematically impossible to preserve existing districts in most cases when dealing with population changes of this magnitude.

The 1990 Commission was dealing with an overall population change of only 1.6% compared to the 12.9% change in 2000. One would think with such a small population change that the 1990 plan would have been able to preserve more existing districts in their redistricting plan. Even though the 1990 Commission adopted this criterion, it was widely ignored and the 1990 plan drew new districts significantly different from the existing ones.

The 2000 Commission recognized the criterion of trying to draw districts that were the same as the current districts would be fraudulent and in violation of both the United States and Montana Constitutions which each uphold the principle of "one person, one vote."

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Finding 6: WHEREAS, the Commission has disregarded, in several instances, the discretionary criteria adopted by the Commission on April 18, 2001, by dividing many towns, cities, and counties, while giving little or no regard to keeping communities of interest intact (Page 1, 29-30, Page 2, Line 1).

Refutation: Mandatory and discretionary criteria were adopted unanimously by the 2000 Commission on November 16, 2000. All motions to adopt the criteria were made by Republican Commissioners Elaine Sliter and Jack Rehberg.

The Commission's plan paid close attention to communities of interest when drawing the districts. After every public hearing, amendments were suggested to address the issue of communities of interest. Republican elected officials suggested most of the amendments adopted by the Commission.

Each district adopted in the plan was specifically described and accompanied by explanations of how it met all constitutional and statutory criteria in comprehensive motions adopted by the Commission.

The Commission made a concerted effort to reunite towns and counties which had been divided during the 1990 redistricting plan. The Commission received objections from only the residents of Lewistown, Montana and Anaconda, Montana, concerning the division of those towns. In both cases, there was also testimony in support of the division. Ultimately these towns were divided to balance other mandatory and discretionary criteria. Under the new plan, both Lewistown and Anaconda will now have two rather than one representative taking their concerns to the Legislature.

Because of the major changes reported in the 2000 Census it was much more difficult to keep counties intact. Forty Montana counties either lost population or did not grow at the state growth rate of 12.9%. Great emphasis was given to accommodate the desires of counties but it is mathematically impossible to keep them all intact. That is why this is a discretionary criterion which the Commission must balance against other criteria.

Finding 7: WHEREAS, the arbitrary assignment of holdover Senators to districts that did not elect them is at best wrong, blatantly unethical, and simply unfair to the electors;(Page 2, Line 2-3)

Refutation: The Commission has been fair in the assignment of holdover Senators. With every new redistricting plan, a handful of holdover senators will be unhappy with their district assignments. The 2000 Commission took extensive public testimony on the assignment of holdover senators, made amendments to accommodate Republican senators' concerns, and came up with a plan that minimizes election transition problems.

In public testimony before both the Commission and the Joint Legislative Committee on Redistricting only 2 of 25 holdover senators, Senators Sherm Anderson and John Bohlinger, raised objections to their district assignments. Conversely 23 of 25 holdover senators have not opposed their district assignments.

The Commission amended the plan to fully address the concerns of both Sen. Gary Perry (R-Manhattan) and Sen. Keith Bales (R-Otter) in the assignment of new districts.

Sen. Jerry Black (R-Shelby) testified in support of the Commission's assignment of his district and thanked them for their work.

Recommendation to Commission: That the Senate (& House) rejects the Legislative Redistricting Plan for the reasons stated above, requests that the Commission reconvene and adopt a plan that conforms to the mandatory and discretionary criteria as set forth by the 1972 Constitutional Convention, and contends that the majority of the Commission has performed a constitutional injustice to the electorate and the elected legislators of Montana, that the plan has been conceived in a mean-spirited, partisan fashion that disregards the mandatory criteria as set forth by the 1972 Constitutional Convention and the discretionary criteria adopted by the Commission itself, that the Commission's exercise in political gerrymandering is unacceptable to the citizens of the state of Montana, and that the legislative redistricting plan must be redone.

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Refutation: The Republican majority members of the Joint Legislative Committee have made only one "global" recommendation to the Commission which is to redraw the entire plan. Past legislatures provided previous commissions with several specific recommendations to change the redistricting plan. Previous commissions were routinely able to accommodate about half of those recommendations in their final plans.

The Republican majority members of the Joint Legislative Committee have completely failed their responsibility to suggest specific changes. Instead they have chosen to engage in name-calling and political posturing. This is a disservice to the members of the 2003 Legislature and the people of Montana.

The authors of this Minority Report have reviewed each of the seven findings of SR 2 and HR 3 and have found they lack merit and substance. Consequently, we cannot support either of these resolutions and would urge all fair-minded legislators to vote against these resolutions.

Conclusion

It is the finding of the authors of this report that the 2000 Districting Commission upheld all Montana and United States Constitutional and legal requirements for redistricting in all their actions.

It is our strong recommendation that members of the 2003 Legislature personally contact the Commission if they desire further specific amendments to the plan. The Republican majority members of the Joint Legislative Committee have failed to provide this information.

The time is now for the 2003 Legislature to do what other legislatures have done in the past. We would urge all our legislative colleagues to make recommendations and return to conducting the people's business.

The Commission should be congratulated rather than personally attacked for their hard work. Redistricting plans never satisfy everyone, but they need to be done so that we can fulfill the promise of "one person, one vote" for all Montana's citizens.

The Commission has presented a plan that is fair, constitutional, legal, and will serve all the citizens of Montana in the coming decade. We would urge the swift adoption of the Commission's plan.

signed: Senator Gerald Pease
January 29, 2003

signed: Representative Joey Jayne

UNFINISHED BUSINESS

Senator Thomas informed the Senate that he and the Minority Leader would be meeting with Greg Petesch, Code Commissioner, to discuss action on the adverse report on **SB 215**, rather than calling a Rules Committee meeting.

ANNOUNCEMENTS

Committee meetings were announced by committee chairs.

Majority Leader Thomas moved that the Senate adjourn until 1:00 p.m., Friday, January 31, 2003. Motion carried.

Senate adjourned at 2:39 p.m.

ROSANA SKELTON
Secretary of the Senate

BOB KEENAN
President of the Senate